

SENATE BILL 3183  
By Kurita

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, Part 10, relative to an equity assessment on non-participating manufacturers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by adding the following language as a new section to be designated as follows:

Section 67-4-1029.

(a) As used in this section, "nonparticipating manufacturer" has the same meaning as ascribed in § 67-4-2601(6).

(b) Every nonparticipating manufacturer shall pay to the department for exclusive state purposes an equity assessment, in addition to all other assessments, fees, or taxes, upon each package of nonparticipating-manufacturer cigarettes to which a stamp or stamp-alternative is affixed as required under § 67-4-1006. The rate of the equity assessment shall be twenty-five (25) mills on each cigarette. The department shall collect the equity assessment each month directly from the nonparticipating manufacturer based on information received by the department under subsections (d) and (e). Except as otherwise provided in this section, the equity assessment shall be collected, paid, administered, and enforced in the same manner as the tax imposed by § 67-4-1002.

(c) The purposes of this equity assessment are:

(1) To prevent nonparticipating manufacturers from undermining the state's policy of reducing underage smoking by offering their

cigarettes for sale substantially below the price of cigarettes of other manufacturers;

(2) To protect funding, which is reduced as a result of the growth of nonparticipating-manufacturer cigarette sales, for programs funded in whole or in part by payments to the state under the master settlement agreement, as defined in § 47-31-102(5), and to recoup settlement-payment revenue lost to the state as a result of nonparticipating-manufacturer cigarette sales;

(3) To fund enforcement and administration of title 47, Chapter 31, and title 67, chapter 4, part 26, related nonparticipating-manufacturer legislation, and the equity assessment imposed by this section, including reasonable administrative costs incurred by persons subject to subsection (e) by reason of the requirements of that subsection; and

(4) To fund such other purposes as the general assembly shall determine.

(d) A nonparticipating manufacturer whose cigarettes are being offered for sale in this state on the effective date of this section shall pay the equity assessment imposed by this section within thirty (30) days after the effective date of this section. If cigarettes of a nonparticipating manufacturer are not being offered for sale in this state on the effective date of this section, then the nonparticipating manufacturer, before its cigarettes may begin to be offered for sale in this state, shall prepay the equity assessment imposed by this section for the number of cigarettes of the nonparticipating manufacturer that the department reasonably projects will be sold in the first calendar month in which cigarettes of the nonparticipating manufacturer are sold in this state. The prepayment amount shall be determined by multiplying twenty-five (25) mills times the number of cigarettes that the department reasonably projects that the nonparticipating manufacturer will sell in this state in that first calendar month, or fifty-thousand dollars (\$50,000), whichever is more. The department may require

a nonparticipating manufacturer to provide any information reasonably necessary to determine the equity assessment payment amount and, in the case of prepayment, the commissioner shall establish procedures providing for reimbursement to nonparticipating manufacturers if actual sales are less than sales as projected by the department and for additional payment by nonparticipating manufacturers if actual sales are greater than sales as projected by the department.

(e) Persons authorized to affix stamps or stamp-alternatives shall file with the department a monthly report by the 20<sup>th</sup> day of each month stating the number and denominations of stamps or stamp-alternatives affixed to individual packages of nonparticipating-manufacturer cigarettes, by manufacturer and brand family, sold by the person for each place of business in the preceding month. Persons failing to comply with this subsection shall be subject to the penalties specified in § 67-4-1016.

(f) A person shall not affix, or cause to be affixed, to any package of cigarettes of a nonparticipating manufacturer the stamp required under existing law after receiving notice from the commissioner, which the commissioner shall provide, that the nonparticipating manufacturer has not paid in full the equity assessment imposed by this section. A person that has affixed the stamp required under existing law to any package of cigarettes of a nonparticipating manufacturer in violation of this subsection shall be subject to the penalties specified in § 67-4-1016 and, in addition, shall be subject to the penalties specified in § 67-4-1024 for possession of tobacco products to which the required stamp has not been affixed and upon which the applicable tobacco taxes have not been paid.

(g) Cigarettes of a nonparticipating manufacturer that has not paid the equity assessment imposed by this section shall be treated as cigarettes of a nonparticipating manufacturer that has not provided the certification required by § 67-4-2602(a), or any successor legislation, and shall be treated as tobacco

products to which the required stamps has not been affixed and upon which the applicable tobacco taxes have not been paid.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.